

June 25 2010

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Kevin M. Taylor

Petitioner

CDC-08-131

V.

State of Montana

Request for Writ of Mandamus

Respondent.

Comes now the Petitioner Kevin M. Taylor pleads this Court to exercise Supervisory Control and assign a different Judge to review the Petitioner's Petition for Post Conviction Relief. Currently, Mr. Taylor has a complaint against Judge Neill with the Judicial Ethics Committee and part of Taylor's Post Conviction Relief deals with alleged Ethical violations committed by Judge Neill. It is not prudent for a Judge to review a case where Ethical Violations are a charge against him. It can not be expected of a Judge to rule on his own actions.

See attached Ethics Complaint.

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#3001684

Pro-Se

#9 Statement to Judicial Ethics Commission, Montana

Based on the following facts, I, Kevin Mark Taylor, hereafter referred to as "Defendant" claim that Judge Neill has violated the following Cannons of Judicial Ethics and Montana Code Annotated Statute.

Cannon 1

Rule 1.2: Promoting Confidence in the Judiciary

Actual improprieties include violations of LAW, Court Rules, or Provisions of this code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the Judge violated this code or engaged in other conduct that reflects adversely on the judge's honesty, impartiality, temperament or fitness to serve as a judge.

Rule 2.4 External Influences on Judicial Conduct

(B) A judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge's conduct or judgment.

Cannon 2

Rule 2.12 Disqualification

(A) A judge shall disqualify him/herself in any proceeding in which the Judge's impartiality might reasonably be questioned, including, but not limited to, the following circumstances:

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(1) The Judge has a personal bias or prejudice concerning a party, or personal knowledge facts that are in dispute.

Attachment A

A judge should disclose on the record information that the judge believes the Parties or their Lawyers might reasonably consider relevant to a possible motion for disqualification even if the Judge believes there is no basis for disqualification.

Montana Code Annotated

3-1-803 Disqualification of Judges

Any Justice, Judge, Justice of the Peace must not sit or act in any proceeding or action:

1) To which he is a party or in which he has interest.

Statement of Facts

The Defendant was a Massage Therapist sub-contracted at the PEAK Health and Wellness Center of Great Falls, MT from March, 2007 to March, 2008. During this time frame the Defendant provided well over 100 massages to various clients. In March, 2008, the Defendant was accused and charged with Sexual Intercourse without Consent because the alleged victim claimed the Defendant:

Attachment B

“Penetrated her vagina digitally during a massage”. The Defendant maintains his innocence. In January, 2009, the Defendant was tried and convicted.

The week after the trial the Defendant was informed that he had worked on Judge Neill’s wife during the course of employment with the PEAK. The Defendant did not know this at anytime during the entire ten month process due to the fact the wife, for safety reasons the Defendant fully understands, goes by a different last name. Upon receiving the wife’s name, the Defendant the looked through his client records and discovered that he had worked on her July 19, 2007. Due to human nature to share experience, she was highly likely to share her experience with Judge Neill. Through the whole process, Judge Neill was highly aware that the Defendant had performed a massage on his wife. Due to the necessary intimate nature of massage and the charges against the Defendant, Judge Neill was allowed to think of any possibility happening to his wife whether she said it was a good massage or not.

Attachment C

Judge went on to sentence the Defendant to Thirty (30) years with Five (5) suspended even though the Defendant had no prior criminal record,

was a veteran, and was deemed a Tier One (1) offender with the PSI psychologist suggesting the Defendant could be treated in a Pre-Release Program. Judge Neill even agreed the crime was non-violent and waived the minimum sentence. Judge Neill then went on to impose Parole restrictions you would only use on a Tier Three (III) offender, such as annual lie detector test and blood test.

Judge Neill also allowed Professional Psychiatric opinions to stay in the Parole packet besides the State's PSI. These and many other rulings throughout the proceedings create an aura of possible bias.

Conclusion

Judge Neill's refusal to disqualify himself violates MCA 3-1-803 which further violated Cannon 1, proving an impropriety by violating the Law. Judge Neill also violated Cannon 2. Judge Neil should have in the least, Notified the Defendant of the fact that he worked on the Judge's wife. This would have allowed the Defendant his right to

Attachment D

Make a motion for disqualification if he felt it was necessary to receive a fair trial.

By seemingly trying to hide the fact brings into serious doubt Judge Neill's motivation for sitting on this case and reflects very adversely on his honesty, impartiality and temperament.

The Defendant is bringing this issue before the Commission at this late date because he was advised by both Trial and Appellant Counsel that this matter could not be addressed until Post Conviction Relief proceedings have been initiated. Upon further research, the Defendant discovered this issue could be raised at any time.

Although Post Conviction Relief deals with issues not present in the record such as this complaint, the Defendant feels it is inappropriate for a judge to rule whether or not he himself has violated the Canons of Judicial Ethics.

Verification of the relationship between the Client the Defendant worked on July 19, 2007 and Judge Neill can be obtained by contacting Lynn Compton (listed as Witness), who has access to the member list and massage schedule book at the PEAK Health and Wellness Center in Great Falls, MT.

Attachment E

The Defendant feels it is still imperative to insure the safety and anonymity of Judge Neill's wife and can therefore only give you the first 3 letters of her last name in this complaint that anyone can read. Those letters are "ASH". By Judge Neill seeming to hide the fact the Defendant worked on his wife, thus impinging his honor and honesty arise.

One – A judge can steer a verdict anyway he wants just by the motions he grants and denies. How can the public be assured that his decisions were just interpretations of the law in accordance with the facts of the case, or motivated by the fact the Defendant had his wife in a very intimate position during a massage and what the Defendant was accused of could have happened to his wife. Thus, enhancing his need to convict the Defendant.

Two – Since Judge Neill hid his relationship to a client of the Defendant, did he also hide the fact that he knew the alleged victims? Great Falls is a small town and many jurors were excused because of knowledge of the Defendant or the alleged victims.

Kevin M. Taylor

AO#3001684

CDC-08-131

DA 09-0246

CERTIFICATION OF SERVICE

I, Kevin M. Taylor, hereby swear that on the 22nd day of June, 2010, a true and correct copy of the foregoing Request for Writ of Mandamus was delivered to the Cascade County Attorney and the State Attorney General at the following Addresses:

Montana Attorney General
Steve Bullock
215 North Sanders
P. O. Box 201401
Helena, MT 59620-1401

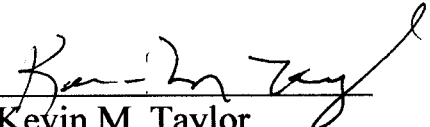
Cascade County Attorney
John Parker
121 Fourth Street North
Great Falls, MT 59401

Dated this 22nd day of June, 2010

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Shelby, MT 59474